

Luke Andrew Busby, Ltd.
Nevada State Bar No. 10319
216 East Liberty St.
Reno, NV 89501
775-453-0112
luke@lukeandrewbusbyltd.com
Attorney for the Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JSB, a minor, by his parents and natural
guardians MARINA DIAZ and
JOSE DIAZ,

Plaintiff(s),

vs.

CARSON CITY DEPUTY SHERIFF
HARRY W. WHEELER

Defendant(s).

Case No. 3:14-cv-00436-LRH-WGC

**REPLY TO RESPONSE TO
MOTION TO LIFT STAY**

Comes Now, Plaintiff, JSB, a minor, by his parents and natural guardians MARINA DIAZ and JOSE DIAZ, by and through the undersigned counsel, and hereby file the following Reply to the April 18, 2016 Defendant's Response to Plaintiffs' Motion to Lift Stay ("Defendant's Response"). This Reply is based on the following Memorandum of Points and Authorities.

///

MEMORANDUM OF POINTS AND AUTHORITIES

1
2
3 1. The Defendant's Response argues that the Court's stay in this matter should be lifted and
4 that the Defendant should be permitted to renew his Motion for Summary Judgment (Doc. #16).

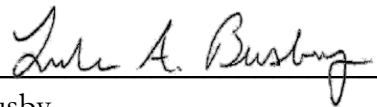
5
6 2. This case was filed by the Plaintiff on August 19, 2014. The time period for filing
7 dispositive motions in this matter passed on April 7, 2015, more than a year ago. Further delay of
8 this case for renewed consideration and refiling of another Motion for Summary Judgment is
9 unreasonable given the amount of time that this case has been before the Court.

10
11 3. Further, based on the ruling from the Nevada Supreme Court and the First Judicial District
12 Court (Doc. # 29), there can no longer be any adverse ruling that could preclude liability for the
13 Defendant under *Heck v. Humphrey*, 512 U.S. 477 (U.S. 1994). The remaining arguments in the
14 Defendant's Motion for Summary Judgment are as follows: that JSB's claim fails on substantive
15 grounds (Motion at page 12 line 22); that the Defendant is entitled to Qualified Immunity (Motion
16 at page 19 line 13); and that JSB's State Law claims fail as a matter of law because the force that the
17 Defendant used to detain him was reasonable and discretionary immunity shields the Defendant.
18 All of these arguments are essentially derivative from the Defendant's defense that the amount of
19 force used was reasonable under the circumstances, which are issues upon which disputes as to
20 genuine issues of material fact undeniably exist, as several witnesses to what occurred present
21 differing accounts of the reasonableness of the amount of force used by the Defendant on JSB.

22
23
24
25 4. Although the Court's Order in Doc. #28 states that it will allow the Defendant to refile the
26 Motion for Summary Judgment subsequent to the outcome of JSB's appeal of his criminal
27 conviction, because the underlying rulings are very clearly adverse to the Defendant's Motion for
28

Summary Judgment, the Plaintiff requests that Court lift the stay simply deny the already filed Motion for Summary Judgment and permit this matter to proceed to trial on the merits forthwith.

Respectfully submitted this April 18, 2016.

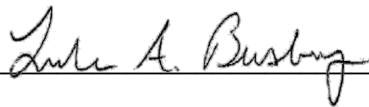
By: 
Luke Busby
Nevada State Bar No. 10319
216 East Liberty St.
Reno, NV 89501
775-453-0112
luke@lukeandrewbusbyltd.com
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on Monday, April 18, 2016, I electronically transmitted the foregoing pleading to document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel registered to receive Electronic Filings and/or I mailed the foregoing pleading to the address below by US Mail postage prepaid.

Katherine F. Parks, Esq.
Thorndal Armstrong
6590 S. McCarran Blvd. Suite B.
Reno, NV 89509
Attorney for the Defendant

By: _____



Luke Busby